



SAN DIEGO COUNTY OFFICE OF EDUCATION

6401 LINDA VISTA ROAD, SAN DIEGO, CALIFORNIA 92111-7399 (858) 292-3500

Superintendent of Schools

Randolph E. Ward, Ed.D.

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JUL 15 2010

SAN DIEGO
COUNTY GRAND JURY

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JUL 14 2010

July 12, 2010

Honorable Kevin A. Enright
Presiding Judge of the Superior Court
220 W. Broadway
San Diego, CA 92101

Re: Review and Comments on San Diego County Grand Jury 2009-10 Report
"Ethics in Government—Code of Ethics, Internal Controls, Fraud Hotlines"

Dear Judge Enright:

We have reviewed the Facts, Findings and Recommendations in "Ethics in Government—Code of Ethics, Internal Controls, Fraud Hotlines" from the San Diego County Grand Jury 2009-10, Final Report. We agree with the overall findings of the Grand Jury, and concur that strong Codes of Ethics, robust internal controls and the effective use of fraud hotlines are important components for the ethical operation of governmental entities.

In the Final Report, the third Fact in Fact Set Four (p. 134) is most applicable to the San Diego County Office of Education (SDCOE):

Fact: The San Diego County Office of Education has a Code of Ethics for employees dealing primarily with conflict of interest issues, as opposed to fraud, waste and abuse, and utilizes and makes available to school districts, the WeTip crime hotline. With the exception of the San Diego Unified School District, most school districts have some sort of Code of Ethics, but neither internal auditors nor fraud, waste, abuse and conflict of interest hotlines administered by third party providers assuring anonymity.

In addition, two Findings (pp. 135-136) are most applicable to the San Diego County Office of Education:

Finding 12: Excepting the San Diego Unified School District, most school districts have a Code of Ethics for various subject matters such as sports, but most have neither internal auditors nor fraud hotlines outsourced to third party providers assuring anonymity.

Finding 16: The Grand Jury finds that most of the governmental organizations within San Diego County lack either an integrated comprehensive fraud, waste, abuse and conflict of interest Code of Ethics, a consistently applied internal controls process compliant with Generally Accepted Government Auditing Standards and/or Generally Accepted Accounting Principles, or a fraud, waste, abuse and conflict of interest hotline outsourced to a third party provider assuring anonymity.

Based upon the above mentioned Fact and Findings, The San Diego County Office of Education provides responses to the Recommendations of the Grand Jury as evidenced below.

Board of Education

Mark C. Anderson Susan Hartley Sharon C. Jones Jerry R. Rindone John Witt

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SERVICE AND LEADERSHIP

Recommendation 10-73: Bring before the governing body of each entity listed above for its consideration in a public meeting a proposal to adopt integrated comprehensive Codes of Ethics defining and prohibiting fraud, waste, abuse and conflict of interest.

The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation as follows.

The San Diego County Office of Education has an existing integrated, comprehensive Code of Ethics that includes prohibitions against fraud, waste, abuse, and conflicts of interest.

Administrative Regulation 4020, Code of Ethics (attached), adopted October 21, 2009, by the San Diego County Office of Education (SDCOE) "presents expectations and guidance to SDCOE employees for maintaining the highest ethical standards in their official activities and relationships."

The Code of Ethics establishes the expectation that employees will perform their duties responsibly and conscientiously, with honesty and integrity, and that employees' conduct will be well above the minimum standards required by law. It prohibits the violation, or appearance of a violation, of "the laws and regulations governing the County Board of Education, the San Diego County Superintendent of Schools, and the schools, programs, and operations of the San Diego County Office of Education." It describes and addresses ethical issues that may confront employees in the performance of their official duties.

The Code of Ethics is supported by SDCOE administrative regulations and County Board of Education policies, which present more specific requirements and procedures related to each of the topics addressed; these are cited in the Code of Ethics for reference.

The Code of Ethics requires that employees report to their immediate supervisor or the executive director, Human Resources, any improper governmental activity on the part of SDCOE or its employees. Education Code section 44112(c) defines "improper governmental activity" as follows:

- (1) The activity violates a state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty.
- (2) The activity is economically wasteful or involves gross misconduct, incompetency, or inefficiency.

Fraud

In addition to the prohibition against fraud as an improper governmental activity under Education Code section 41122(c)(1), the Code of Ethics requires that employees adhere to strict standards and follow prescribed procedures for preventing fraud when managing and handling assets and funds under the control of SDCOE. These procedures are specified in the *California School Accounting Manual*, as discussed under Recommendation 10-74 below. False records and communications of any kind, both internal and external, are prohibited.

Waste

In addition to the prohibition against waste as an improper governmental activity under Education Code section 41122(c)(2), the Code of Ethics requires employees to use good judgment and receive good value when authorized to spend SDCOE funds or when required to incur reimbursable personal expenses. Employees are required to ensure that SDCOE funds and other assets are safeguarded and used responsibly.

Abuse

In addition to the prohibition against misuse of government property as an improper governmental activity under Education Code section 41122(c)(1), the Code of Ethics addresses abuse by including the requirement that SDCOE funds and all other assets, such as fleet vehicles, supplies, and equipment, be used only for official business and not for personal benefit. Also included is the requirement that employees follow state and federal laws and SDCOE policies and administrative regulations related to the protection of confidential records, using such records only for legitimate business purposes. Employees are required to maintain the highest ethical standards in protecting intellectual property owned by SDCOE, as well as to make clear distinctions between personal views and official statements on behalf of SDCOE. The potential for abuse of employees' official positions that involves conflicts of interest is discussed below.

Conflicts of Interest

The Code of Ethics addresses circumstances involving conflicts of interest as defined in the California Government Code.

Employees are prohibited from engaging in any employment, activity, or enterprise for compensation that is inconsistent, incompatible, or in conflict with their duties, functions, or responsibilities as employees of a local agency. Employees are required to make judgments that are free from the influence of personal considerations and are in the best interests of SDCOE. Employees are prohibited from making, participating in making, or influencing any decision that may have a material financial effect on their personal financial interests. The Code of Ethics describes specific prohibited activities, such as entering into contracts on behalf of SDCOE in which employees have a financial interest and the acceptance of kickbacks.

This section of the Code of Ethics is supplemented by requirements of the Conflict of Interest Code of the San Diego Board of Education and the County Superintendent of Schools, which is currently under revision in connection with the mandated biennial review process.

Recommendation 10-74: Bring before the governing body of each entity listed above for its consideration in a public meeting a proposal to adopt and apply internal controls compliant with Generally Accepted Government Auditing Standards and/or Generally Accepted Accounting Principles as applicable.

The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation as follows.

County Offices of Education, along with Local Education Agencies (LEAs; e.g. school districts), are required to conduct annual independent audits of internal controls, among other financial issues.

California Education Code section 41020(b) (1) states:

Not later than the first day of May of each fiscal year, each county superintendent of schools shall provide for an audit of all funds under his or her jurisdiction and control and the governing board of each local educational agency shall either provide for an audit of the books and accounts of the local educational agency, including an audit of income and expenditures by source of funds, or make arrangements with the county superintendent of schools having jurisdiction over the local educational agency to provide for that auditing.

The Education Code also states in section 41020(b) (4) that "An audit conducted pursuant to this section shall comply fully with the Government Auditing Standards issued by the Comptroller General of the United States." The Education Audit Appeals Panel for the State of California issues an Audit Guide, named the *Standards and Procedures for Audits of California K-12 Local Education Agencies*. In the Audit Guide it states that one component of all audit reports is a "Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*" (section 19815).

Specifically concerning fraud, the *Government Auditing Standards* incorporates the provisions of the Statement on Auditing Standards published by the Auditing Standards Board of the American Institute of Certified Public Accountants (AICPA). As illustrated in *Consideration of Fraud in a Financial Statement Audit – SAS No. 99* (AICPA), Statement on Auditing Standards No. 99 includes:

- Description and characteristics of fraud.
- The importance of exercising professional skepticism.
- Discussion among engagement personnel regarding the risks of material misstatement due to fraud.
- Obtaining the information needed to identify risks of material misstatement due to fraud.
- Identifying risks that may result in a material misstatement due to fraud.
- Assessing the identified risks after taking into account an evaluation of the entity's programs and controls.
- Responding to the results of the assessment.
- Evaluating audit evidence.
- Communicating about fraud to management, the audit committee, and others.
- Documenting the auditor's consideration of fraud.

Regarding auditors and their adherence to Generally Accepted Government Auditing Standards (GAGAS), the California State Controller publishes a list of approved auditors that Local Education Agencies may use, however, the State Controller does not require certification of adherence to GAGAS for its auditor recommendations. That being said, the State Controller conducts periodic quality reviews of audit firms as required by California Education Code section 41020(f)(3)(B), and part of these quality reviews includes a check for auditor adherence to GAGAS as evidenced in auditing industry-required Peer Reviews of each auditing firm.

Additionally, California Education Code section 41010 requires that each school district shall operate its accounting system within the guidelines of the *California School Accounting Manual* (CSAM). Direct communication with the California Department of Education confirmed that the CSAM compiles with GAAP, with minor exceptions typically due to the time lag involved in adopting new CSAM policies to reflect new GAAP requirements.

Finally, SDCOE also provides internal control resources for school districts within San Diego County as part of its Commercial Warrant Audit function. The Commercial Warrant Audit staff audits expenditures made to vendors by 38 K-12 school districts and three community college districts for compliance with applicable laws and regulations, including, but not limited to, Education, Public Contract, and Government Codes. In 2008-09 this unit audited 9.71% of all commercial warrants issued by these districts, representing 53.08% of the total dollar amount of warrants issued.

Recommendation 10-75: Bring before the governing body of each entity listed above for its consideration in a public meeting a proposal to adopt and implement fraud, waste, abuse and conflict of interest hotlines outsourced to third party providers, assuring anonymity.

The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation as follows.

As noted in the third Fact of Fact Set Four, "The San Diego County Office of Education...utilizes and makes available to school districts, the WeTip crime hotline."

WeTip is a toll-free, anonymous, third party 24-hour hotline that can be used to report fraud or crime. In the case of the San Diego County Office of Education, anonymous tips are reported to the San Diego Police Department, which then contacts SDCOE to begin investigation of the complaint. Through the SDCOE Risk Management Joint Powers Authority (JPA), WeTip is also made available to schools districts that are members of the JPA.

The San Diego County Office of Education agrees with the Grand Jury that disseminating knowledge of the WeTip program is a useful action, and we will increase the visibility of our participation in that program to SDCOE employees.

On behalf of the San Diego County Office of Education, I share your interest in ensuring that governmental agencies adhere to the highest ethical standards. The San Diego County Office of Education will continue to diligently meet statutory requirements as to the ethical discharge of our duties.

Sincerely,



Randolph E. Ward, Ed.D.
County Superintendent of Schools

REW:LLD:RM

SAN DIEGO COUNTY OFFICE OF EDUCATION

**ADMINISTRATIVE
REGULATION NO. 4020**

CLASSIFICATION: All Personnel

ADOPTED: 10/21/09

REVISED:

SUBJECT: Code of Ethics

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This Code of Ethics presents expectations and guidance to San Diego County Office of Education employees for maintaining the highest ethical standards in their official activities and relationships. This Code supports the mission of the County Office of Education by promoting trust, commitment, and teamwork within the organization and between the San Diego County Office of Education and its clients, partners, and the greater community.

All official conduct should be well above the minimum standards required by law. Accordingly, employees must ensure that their actions can withstand the closest possible public scrutiny and can, in no way, be interpreted as being in contravention of the laws and regulations governing the County Board of Education, the San Diego County Superintendent of Schools, and the schools, programs, and operations of the San Diego County Office of Education.

The San Diego County Office of Education is committed to ensuring that the conduct of its business and activities is free from misconduct or illegality. Employees are expected to disclose any improper governmental activity on the part of the San Diego County Office of Education or its employees. Employees should immediately report any evidence of such activity to their immediate supervisor or the executive director, Human Resources. Employees may use the WeTip toll-free hotline to submit an anonymous report of criminal activity.

General Employee Conduct

It is expected that employees will be proactive in creating a positive work environment in which the inherent worth of each person is recognized and colleagues, students, clients, business associates, and members of the public are treated with fairness, dignity, and respect. Employee conduct is expected to be professional, businesslike, and in accordance with high standards of decorum.

The San Diego County Office of Education is dedicated to maintaining a culture in which employees adhere to the highest ethical standards. It is expected that employees will demonstrate ethical conduct in the performance of their duties by acting, at all times, responsibly and conscientiously, with honesty and integrity. All official actions must reflect employees' use of good judgment, due care, competence, and diligence.

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Conflicts of Interest

State law requires that San Diego County Office of Education employees refrain from engaging in any employment, activity, or enterprise for compensation that is inconsistent, incompatible, or in conflict with their duties, functions, or responsibilities as employees of a local agency. The Conflict of Interest Code adopted by the County Board of Education specifies positions and disclosure categories for individual employees who are required, by law, to disclose their personal financial interests by filing annual statements of economic interest (SEIs).

Employees must avoid actual or apparent conflicts of interest in their personal and professional relationships. It is expected that employees will perform their duties in an impartial manner, using independent judgment that is free from the influence of personal considerations and in accordance with the best interests of the San Diego County Office of Education. Employees must not make, participate in making, or use their official position to influence any decision that has a reasonably foreseeable material financial effect on their personal financial interests.

1. Relationships with Clients and Suppliers

Employees may not enter into any contract on behalf of the San Diego County Office of Education in which they have a financial interest. Employees should avoid investing in or acquiring a financial interest in any business that has a contractual relationship with, or provides goods or services to, the County Office of Education, if such investment or interest could influence or create the impression of influencing their decisions in the performance of their duties.

2. Gifts, Entertainment, and Favors

Employees must refrain from accepting gifts, entertainment, or personal favors that could in any way influence, or appear to influence, official decisions in favor of any person or organization with whom or with which the San Diego County Office of Education has, or is likely to have, dealings.

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In connection with San Diego County Office of Education business activities, employees may not receive payment or compensation of any kind, except as authorized under San Diego County Office of Education remuneration policies. In particular, the acceptance of kickbacks and secret commissions from suppliers or others is strictly prohibited.

All employees share a responsibility for the San Diego County Office of Education's good public relations, especially at the community level. Their willingness to support religious, charitable, educational, and civic activities brings credit to the San Diego County Office of Education and is encouraged. Employees must, however, avoid acquiring any business interest or participating in any other activity, enterprise, or employment outside the San Diego County Office of Education that would, or might appear to:

1. Create an excessive demand upon their time and attention and thus cause the performance of their duties to be less efficient.
2. Involve the performance of an act that may later come under the review or enforcement of the San Diego County Office of Education.
3. Involve the use of the assets, influence, or prestige of the San Diego County Office of Education for private gain or advantage.

Regardless of the circumstances, if employees sense that a course of action they have pursued, are presently pursuing, or are contemplating pursuing may involve them in a conflict of interest with their employer, they should immediately communicate all the facts to their immediate supervisor.

San Diego County Office of Education Funds and Other Assets

As an organization that serves the public and uses public funds to do so, the San Diego County Office of Education takes very seriously its responsibility for safeguarding and ensuring responsible use of its assets and the funds under its control.

The San Diego County Office of Education imposes strict standards to prevent fraud and dishonesty. Employees who have access to the County School Service Fund,

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school or community college district funds, charter school funds, or other assets in cash or non-cash form must follow prescribed procedures for recording, handling, and protecting public funds, as detailed in applicable accounting manuals or other regulatory materials.

It is expected that funds and all other assets of the San Diego County Office of Education and the County Board of Education will be used only for official business and not for personal benefit. Employees must refrain from the improper use of San Diego County Office of Education resources, such as fleet vehicles, supplies, and equipment.

When an employee's position requires spending San Diego County Office of Education funds or incurring reimbursable personal expenses, that individual is expected to use good judgment on behalf of the San Diego County Office of Education to ensure that good value is received for the funds expended.

Ownership of intellectual property created by employees under specified circumstances is held by the San Diego County Board of Education. Employees must maintain the highest ethical standards in the use and protection of materials copyrighted, trademarked, or otherwise owned by the San Diego County Board of Education.

Records and Communications

Comprehensive, reliable records of many kinds are necessary to meet the San Diego County Superintendent of Schools' legal and financial obligations and to manage the business of the San Diego County Office of Education. The San Diego County Office of Education's financial records must reflect all business transactions in an accurate and timely manner. Employees responsible for accounting and record keeping must fully disclose and record all assets, liabilities, or both, and must exercise diligence in enforcing these requirements.

Employees must not make or be a party to any false record or communication of any kind, whether internal or external, including but not limited to: false expense, attendance, financial, or similar reports and statements; and false advertising, deceptive marketing practices, or other misleading representations.

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When communicating publicly on official business, employees must take care to protect the integrity and reputation of the San Diego County Office of Education, the San Diego County Superintendent of Schools, and the San Diego County Board of Education. Employees must not presume to speak for the San Diego County Office of Education on any topic, unless they are certain that the views they express are those of the San Diego County Office of Education and that it is the San Diego County Superintendent of Schools' desire that such views be publicly disseminated. Under all circumstances, employees must clearly distinguish official statements from the expressions of their private views.

Employees must ensure that the San Diego County Office of Education letterhead, logo, and any other representations identified with the San Diego County Office of Education are used only for official business and not for personal, political, or other inappropriate purposes.

In all matters related to clients, students, suppliers, government authorities, the public, and others within the San Diego County Office of Education, employees must make every effort to ensure that communications are complete, accurate, objective, relevant and timely. All proper requests for information are expected to be handled with courtesy and professionalism.

Privacy and Confidentiality

The San Diego County Office of Education is committed to abiding by all state and federal laws and San Diego County Office of Education policies and administrative regulations concerning confidential information, including student records, personnel files, and records of the County Office of Education and County Board of Education that are exempt from disclosure.

It is expected that employees who have access to confidential information in the course of their work assignments will use that information only for legitimate business purposes of the San Diego County Office of Education and will be diligent in protecting privacy rights. Employees must ensure that confidential records are managed, retained, and stored in a safe and secure manner and are reviewed by, or released to, only those individuals with proper authority.

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Making Ethical Decisions

While this Code of Ethics describes general guidelines, it is not intended to be a complete listing or to provide a definitive answer to every ethical dilemma that could arise in the workplace. When making decisions, employees must use good judgment to adhere to both the letter and the spirit of this Code.

Employees who are uncertain about the application or interpretation of this Code of Ethics or any related legal requirements should refer the matter to their supervisor, who, if necessary, should follow established procedures for seeking the advice of legal counsel.

Application and Enforceability

This Code of Ethics applies to all San Diego County Office of Education employees. Its provisions are supported by State and Federal law and regulations and the policies and administrative regulations that govern this agency. Violations may result in administrative or disciplinary action under applicable laws, policies, and regulations.

Board Bylaw: 9270 – Conflict of Interest Code

Board Policy: 2122, 2301, 3310, 4004

Administrative Regulations: 2300, 3310, 3460, 3512, 3513.2, 3542, 3543, 3560, 3600, 4006, 4020, 4021, 4024

Legal references: Education Code

7054, 44110 - 44114, 44932, 44933, 49073 - 49079

Government Code

1090, 1098, 1125 – 1126, 8547, 53296 – 53299, 87100, 87103, 87302, 89500 et seq.

Labor Code

1102.5, 1106

Management Resources:

California Fair Political Practices Commission: www.fppc.ca.gov

WeTip crime hotline: 1-800-78-CRIME; WeTip Website: www.wetip.com